



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FIRST CLASS MAIL

JAN - 8 2013

William L. Drake, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 6707
(formerly RR 12L-15)

Dear Mr. Drake:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Visclosky for Congress and Michael Malczewski in his official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 9, 2012, the Committee was notified that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 2 U.S.C. § 437g. On December 18, 2012, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

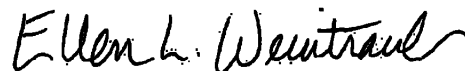
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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Please note that the Committee has a legal obligation to preserve all documents, records, and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Visclosky for Congress and Michael Malczewski
In his official capacity as treasurer

MUR 6707

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2). The Reports Analysis Division ("RAD") referred Visclosky for Congress and Michael Malczewski in his official capacity as treasurer (the "Committee") to the Office of the General Counsel ("OGC") for failing to disclose \$129,816.74 in receipts in the 2008 October Quarterly Report. In response, the Committee acknowledged the reporting errors, and requested pre-probable cause conciliation. Based on the available information, the Commission has determined to open a MUR in connection with RR 12L-15 and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to disclose receipts accurately in a report to the Commission.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

On December 2, 2010, the Committee amended its 2008 October Quarterly Report to the Commission to disclose receipts totaling \$129,816.74. RAD referred the Committee to OGC for failing to disclose these receipts. Upon receipt of the Referral, OGC notified the Committee about this matter on April 9, 2012. *See Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38617 (Aug. 4, 2009).

In response to the Referral, the Committee acknowledged the reporting errors and requested pre-probable cause conciliation. *See* Letter from William L. Drake, Counsel for

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Visclosky for Congress, to Jeff S. Jordan, Complaints Examination & Legal Administration, Federal Election Commission (June 1, 2012) at 1. The Committee explained that the reporting discrepancies were due to a former administrative campaign aide's failure to provide to Committee staff accurate information regarding interest earned on the Committee's deposits and investments, activity in the Committee's checking account, and expenses paid with campaign credit cards. *Id.* at 2, 3. The Committee's relationship with the former campaign aide ended in June 2009, but the Committee discovered the reporting inaccuracies only in March 2010, when one of the Committee's banks notified the Committee that a Certificate of Deposit ("CD") held by the Committee had matured. *Id.* at 2. The Committee had not previously been aware that the Committee held that CD. *Id.*

Upon this discovery, the Committee immediately notified RAD that it had failed to report the interest earned on that CD. *Id.* On the advice of the RAD Analyst, the Committee reconciled its financial activity and discovered that, among other things, activity in the Committee's checking account and expenses paid with campaign credit cards had been reported inaccurately. *Id.* at 2, 3. To remedy the discrepancies, the Committee completed a comprehensive, voluntary internal investigation of all campaign disbursements from July 2008 through June 1, 2012. *Id.* at 2. In May 2010, the Committee hired an experienced FEC campaign finance consultant to perform a full, unlimited audit of the Committee's books and FEC reports. *Id.* In accordance with the consultant's advice, the Committee filed amendments to FEC reports for July 2008 through December 2010. *Id.* at 3. The Committee also instituted new controls on its financial accounts, and amended its accounting and reporting procedures to prevent such errors from recurring. *Id.*

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The Act also requires committees to disclose itemized breakdowns of receipts and disbursements, and to disclose the name and address of each person who has made any contribution or received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution or disbursement. *See* 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(3)-(4), (b)(2)-(4).

Here, the Committee did not comply with the Act's reporting requirements when it failed to disclose \$129,816.74 in receipts on its original 2008 October Quarterly Report. Therefore, the Commission has determined to find reason to believe that the Committee violated 2 U.S.C. § 434(b).

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